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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,741

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Paul Martin

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EXAMINER

SMITH, RICHARD A

ART UNIT

PAPER NUMBER

2841

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,741	<b>Applicant(s)</b> MARTIN ET AL.	
	<b>Examiner</b> R. Alexander Smith	<b>Art Unit</b> 2841	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,8,12-20,24 and 26-30 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5,7,8,12-20,24,28 and 29 is/are allowed.
- 6) ☒ Claim(s) 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060731</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 30 is are objected to because of the following informalities: "a base" in line 3 and "at least one fixing member" spanning lines 3-4 do not properly refer to their antecedents introduced in claim 28.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 26 is incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted element is a tile positioning element or means. The preamble states "A tile positioning device" however there is no device, element or means disclosed in the body of the claim which positions tile.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,281,092 to Ryder.

Ryder discloses a tile positioning device for positioning a tile on a roof hip or ridge joint, the device comprising:

two opposing longitudinal spaced apart side members arranged for straddling a roof hip or ridge joint (guide rails 1 and 2),

means for maintaining the longitudinal side members in a substantially parallel configuration (bridging connector 3 with bolt 6), and

at least two foot and/or hand holds extending outwardly from the device (in a broad sense each of the at least two foot and/or, in this case particularly, hand holds is met by members 4 and 5 respectively), and

wherein the foot and/or hand holds are displaceable between an in-use position (as shown in the figures) and a stowed position (when disassembled, e.g., for portage, for hauling in a truck or for storage purposes).

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6. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,218,450 to Shafto.

Shafto discloses a device for positioning comprising:

two opposing longitudinal spaced apart side members arranged for straddling a roof hip or ridge joint (3a and 3b),

means for maintaining the longitudinal side members in a substantially parallel configuration (8a, 8b, 10 with the associated connectors), and

at least two foot and/or hand holds extending outwardly from the device (in a broad sense each of the at least two foot and/or, in this case particularly, hand holds is met by members 8a and 8b respectively), and

wherein the foot and/or hand holds are displaceable between an in-use position (as shown in the figures) and a stowed position (when disassembled, e.g., for portage, hauling in a truck or for storage purposes).

The Applicant should note that the preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

*Allowable Subject Matter*

7. Claims 1-5, 7, 8, 12-20, 24, 28 and 29 are allowable.
8. Claim 30 would be allowable if rewritten to overcome the claim objections set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims.
9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

*Reasons for Allowance*

10. The following is an examiner's statement of reasons for allowance of claims 1-5, 7, 8, 12-20, 24 and 28-30.

For independent claim 1 and the associated dependent claims, the prior art of record does not disclose or clearly suggest a tile positioning device for height adjusting a tile located on a roof hip or ridge joint, each tile having upper and lower faces, the device comprising:

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at least one tile-pressing element mounted between the longitudinal side members, the or each tile-pressing element being arranged to act upon the upper face of a tile located between the longitudinal side members, so as to height position the tile relative to the device

in combination with the remaining limitations of the claim.

For independent claim 24 and the associated dependent claims, the prior art of record does not disclose or clearly suggest a method of height adjusting a tile located on a roof hip or ridge joint, each tile having upper and lower faces, comprising the steps of:

(iv) providing a tile-pressing element arranged to act upon the upper face of a tile located between the side members, so as to height position the tile relative to the device

in combination with the remaining limitations of the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

11. The Examiner would like to thank Mr. Yirga and Mr. Pinchak for their time and consideration in a telephonic conversation held on February 10, 2009.

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related devices or methods.

Of particular note are US 5,513,826 and DE 40 34 229 which teach the advantages of having a foot hold and a foothold/handhold respectively.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on 571-272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R.A.Smith/

February 26, 2009

R. Alexander Smith  
Primary Examiner Art Unit 2841